

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 223 of 2004

Ajay Kumar S/o Sri Prem Chandra Agarwal,
R/o In front of Ajay Tyre Works Union
Office Haridwar Road, Rishikesh,
District Dehradun.

.....Appellant

Versus

1. National Insurance Company Ltd.
through its Senior Managing Director,
Having its Branch Office at Gopal Das Bhawan,
12 Floor, Barakhamba Road, New Delhi.
2. Smt. Neeta Sood D/o Sri J.P. Sood,
R/o D 108 Dilsad Garden,
Pocket B, New Delhi.

Respondents.

Mr. A.K. Joshi, Advocate for the appellant.

Mr. D.S. Patni with Mr. Manish Dalakoti, Advocates for respondent No.1.

None for respondent No.2.

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.**

RAJEEV GUPTA, C.J. (Oral)

This is claimant's appeal preferred under Section 173 of the Motor Vehicles Act for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Addl. District Judge, Dehradun vide Award dated 08.04.2004 passed in M.A.C.T. No. 51 of 2003.

2. Claimant Ajay Kumar claimed compensation of Rs. 10,76,500/- for the injuries sustained by him in the motor accident on 15.10.2002 when he was dashed by the Maruti car bearing registration No. DL 7CB 5991 resulting in multiple injuries to the claimant and fracture of his right leg. The claimant pleaded that on account of the injuries sustained by him in the accident and the fracture of his right leg, he could not pursue his occupation for a period of more than two months and suffered monetary loss.

3. The owner and insurer of the Maruti Car contested the claim and denied their liability to pay compensation to the claimant. The owner took the plea that as the vehicle was insured at the time of the accident, the liability to pay compensation was that of the Insurance Company. The insurer of the Maruti car, on the other hand, took the plea that the person driving the Maruti car was not holding a valid driving license.

4. The claimant examined PW1 Ajay Kumar and PW2 Vinod Kumar in support of his claim, whereas the owner and the insurer of the Maruti Car did not examine any witness.

5. The Tribunal, on the evidence led by the parties, held that claimant Ajay Kumar sustained injuries in the accident on 15.10.2002; the accident occurred due to the rash and negligent driving of the driver of the Maruti Car; and the insurer of the Maruti car was liable to pay compensation to the claimant.

6. Considering the nature of the injuries sustained by the claimant, the Tribunal awarded a sum of Rs. 7,000/- towards Pain and Suffering; Rs. 1,000/- for Loss of Income; and Rs. 17,000/- towards Medical Expenses. Thus, a total sum of Rs. 25,000/- was awarded as compensation to the claimant for the injuries suffered by him in the motor accident on 15.10.2002. The Tribunal, further, directed the insurer to pay interest on the amount of compensation at the rate of 6% per annum in the event of its failure to pay the amount of compensation within a period of one month from the date of the Award.

7. Mr. A.K. Joshi, the learned counsel for the appellant submitted that the Tribunal has erred in awarding low compensation of Rs. 25,000/- only though the claimant suffered multiple serious injuries in the accident and spent huge amount on his treatment. The

learned counsel further submitted that the Tribunal has erred in not awarding interest on the amount of compensation and in directing only a conditional payment of interest in the event of failure of the Insurance Company to pay the amount of compensation within a period of one month from the date of the Award.

8. Mr. D.S. Patni and Mr. Manish Dalakoti, the learned counsel for respondent No. 1 National Insurance Company Ltd., on the other hand, supported the Award and submitted that as the claimant Ajay Kumar did not suffer any permanent disability on account of the injuries and the fractures sustained by him in the accident, the compensation of Rs. 25,000/- awarded by the Tribunal is just and proper and does not call for any enhancement in this appeal.

9. The findings recorded by the Tribunal that claimant Ajay Kumar sustained injuries in the motor accident on 15.10.2002; the accident occurred due to the rash and negligent driving of the driver of the Maruti Car; and the insurer of the Maruti Car was liable to pay compensation to the claimant have, now, attained finality as the respondents have not filed any appeal against the Award.

10. Claimant Ajay Kumar sustained injuries in the accident including fracture of his right leg. It has also come in the evidence that for the treatment of the said fracture, the claimant was operated upon and a rod was inserted in his right leg. The claimant has deposed that on account of the injuries and the fracture suffered by him in the accident, he remained under treatment for a period of about two months. During this period, he could not attend his occupation. Even after the removal of the plaster from his fractured leg, the claimant could not have pursued his occupation for a further period of one month as efficiently as he was doing prior to the accident. Thus, it is apparent that the claimant suffered monetary loss for a period of about three months. The sum of Rs. 1,000/- awarded by the Tribunal

for Loss of Income suffered by the claimant, therefore, is too low and deserves to be enhanced suitably. In our opinion, the loss of income suffered by the claimant for the above period of three months considering the nature of his occupation ought to have been assessed at Rs. 11,000/-. We, therefore, deem it proper to award a sum of Rs. 11,000/- towards Loss of Income suffered by the claimant during the period of his treatment.

11. As the claimant could not establish that the injuries and the fracture sustained by him in the accident resulted in any permanent disability, the claimant is not entitled to receive any compensation under the head of Loss of Future Earning Capacity.

12. The sum of Rs. 17,000/- awarded by the Tribunal towards Medical Expenses does not call for any enhancement, as the claimant could establish the expenditure on his treatment to the extent of Rs. 17,000/- only.

13. The sum of Rs. 7,000/- awarded by the Tribunal towards Pain and Suffering is quite reasonable and does not call for any enhancement.

14. Thus, the claimant, in all, is entitled to receive a total sum of Rs. 35,000/- (17,000 + 7,000 + 11,000) as compensation for the injuries sustained by him in the accident and the amount spent on his treatment.

15. The tribunal has not awarded any interest on the amount of compensation. By directing the conditional payment of interest in the event of the failure of the Insurance Company to pay the compensation within a period of one month from the date of the Award, the claimant has been deprived of the amount of interest,

which was otherwise payable to him. The claim petition was filed on 24.02.2003. The Tribunal awarded compensation of Rs. 25,000/- on 08.04.2004. Today, we have enhanced the compensation of Rs. 25,000/- to Rs. 35000/-. Thus, the claimant is entitled to receive interest on the amount of Rs. 25,000/- from 24.02.2003 to 08.04.2004 and on the enhanced amount of Rs. 10,000/- from 24.02.2003 to 11.09.2006. We, with a view to avoid any delay in the computation of the amount of interest by the Claims Tribunal, deem it proper to quantify the amount of interest payable to the claimant. We, therefore, quantify the amount of interest at Rs. 3,000/-. Thus, the claimant become entitled to receive a total sum of Rs. 38,000/- (Rs. 35,000/- towards Compensation and Rs. 3,000/- towards Interest).

16. For the foregoing reasons, the appeal filed by the appellant under Section 173 of the Motor Vehicles Act is allowed in part. The compensation of Rs. 25,000/- awarded by the Tribunal is enhanced to Rs. 35,000/-. First respondent National Insurance Company Ltd. is directed to pay a sum of Rs. 3,000/- towards interest on the above amount of compensation. The enhanced amount and the amount of interest shall be paid by first respondent National Insurance Company Ltd. to the claimant within a period of two months from today.

17. No order as to costs.

(Rajesh Tandon, J.)	(Rajeev Gupta, C. J.)
11.09.2006	11.09.2006